

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MARK THORNTON

Petitioner,

-v-

STATE OF OHIO

Respondent.

Case No. C-3:10-cv-236

**Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

ENTRY AND ORDER OVERRULING THORNTON'S OBJECTIONS (Doc. #20) TO THE MAGISTRATE JUDGE'S SECOND SUPPLEMENTAL SUBSTITUTED REPORT AND RECOMMENDATIONS; ADOPTING THE MAGISTRATE JUDGE'S SECOND SUPPLEMENTAL SUBSTITUTED REPORT AND RECOMMENDATIONS (Doc. #19) IN ITS ENTIRETY; DISMISSING THORNTON'S PETITION FOR A WRIT OF HABEAS CORPUS WITH PREJUDICE; DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*; DENYING ANY REQUESTED CERTIFICATE OF APPEALABILITY; AND TERMINATING THIS CASE

This matter comes before the Court pursuant to pro se Petitioner Mark Thornton's ("Thornton's") Objections (doc. #20) to Magistrate Judge Michael R. Merz's Second Supplemental Substituted Report and Recommendations (doc. #19). On October 21, 2010, this Court adopted the Magistrate Judge's Substituted Report and Recommendations and Supplemental Substituted Report and Recommendations. (Doc. #12.) This Order was then vacated because Thornton subsequently sought an extension of time to file objections. The extension of time was granted by Notation Order.

Two additional time extensions were then granted and Thornton filed his Objections on February 2, 2011. On February 4, 2011, the Magistrate Judge filed a Second Supplemental Substituted Report and Recommendations (doc. #19) and Thornton again objected (doc. #20).

The time has run and the Warden has not responded to Thornton's latest objections. Thornton's objections are, therefore, ripe for decision.

All four report and recommendations reach the same conclusion: Thornton's Petition for a Writ of Habeas Corpus should be dismissed with prejudice because Thornton is using this § 2241 proceeding to attempt to attack the convictions used to enhance his sentence and that claim is procedurally defaulted because it was not raised at sentencing or on direct appeal.

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Thornton's Objections to the Magistrate Judge's Second Supplemental Substituted Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Second Supplemental Substituted Report and Recommendations is adopted in their entirety.

Thornton's Petition for a Writ of Habeas Corpus is dismissed with prejudice because Thornton is using this § 2241 proceeding to attempt to attack the convictions used to enhance his sentence and that claim is procedurally defaulted because it was not raised at sentencing or on direct appeal. Further, Thornton is denied leave to appeal in forma pauperis and any requested certificate of appealability. Finally, The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and **ORDERED** in Dayton, Ohio, this Twenty-Third Day of March, 2011.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Mark Thornton at his last address of record